

JAN 28 2008

Application No. 09/709,787  
Appeal Brief

Patent  
Attorney Docket No. 89003-6

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In Re: U.S. Patent Application of Benoit LAFLAMME  
App. No.: 09/709,787 Group Art Unit: 2125  
Filed: November 7, 2000 Examiner: Michael D. MASINICK  
For: SPA CONTROLLER COMPUTER INTERFACE

---

APPEAL BRIEF UNDER 37 CFR §41.37

Commissioner for Patents  
Alexandria, Virginia 22313-1450

Sir/Madam:

Further to the Notice of Appeal filed August 29, 2007, the Applicant is submitting herewith an Appeal Brief in accordance with 37 CFR §41.37. The required fee set forth in 37 CFR §41.20(b)(2) is also enclosed.

A petition for extension of time is being filed concurrently herewith.

Application No. 09/709,787  
Appeal Brief

Patent  
Attorney Docket No. 89003-6

37 CFR §41.37 (c)(1) (i) Real Party in interest

The real party in interest is the assignee of the entire interest in the U.S. patent application, namely Gecko Alliance Group Inc.

37 CFR §41.37 (c)(1) (ii) Related Appeals and Interferences

The Applicant believes that there are no appeals or interferences that are related to or may directly affect or be affected by or have a bearing on the Board's decision in the pending appeal.

37 CFR §41.37 (c)(1) (iii) Status of Claims

The present proceeding relates to the following claims:

- Claims 155, 158-172, 180-183, 185-187 and 190-223 : rejected

The rejection of claims 155, 158-172, 180-183, 185-187 and 190-223 is being appealed.

37 CFR §41.37 (c)(1) (iv) Status of Amendments

No amendments have been filed subsequent to the mailing of the Office Action on April 2, 2007.

Application No. 09/709,787  
Appeal Brief

Patent  
Attorney Docket No. 89003-6

37 CFR §41.37 (c)(1) (v) Summary of Claimed Subject Matter

The present application includes 57 claims of which 155, 186, 187, 195, 200 and 216 are independent.

**Claim 155**

Claim 155 is directed to a spa control system (figure 2), comprising a heating module 5A (figure 2) suitable for heating water, at least one water pump 1P or 2P (figure 2) suitable for pumping water through the heating module 5A, a spa controller 53 (figure 2, 3a, 3b, 4, 5a, 5b, 9, 10, 13, 14) adapted for controlling the heating module 5A and the water pump 1P or 2P at least in part on the basis of software installed on the spa controller 53 and an interface signal converter 50 (figures 2, 3a, 3b, 4, 5a, 5b, 9, 10, 13, 15) in communication with the spa controller 53. The interface signal converter 50 is operative for:

- establishing a communications link with a remote computer [200 (figure 2); 51 52 (figure 3B); 101 or 102 or 103 or 201 (figures 5A and 5B); C1 C2 C3 D1 or D2 (figure 7); 160 (figure 9); 165 (figure 10); 300 (figures 13 and 14); p. 4 lines 2-5; p.4 lines 15-17];
- receiving communication signals conveying software components over the communications link, said software components comprising updates to software already installed on the spa controller [p. 9 lines 8-10; figure 8; claim 29 of application as originally filed];
- communicating the software components to the spa controller for updating the software installed on the spa controller [p. 9 lines 9-10; figure 8];

The interface signal converter 50 also converts communication signals received from the remote computer via said communications link and directs the converted signals to the spa controller 53 [p.3 lines 5-7; p.4 lines 24-28]. The interface signal converter 50 also converts signals from said spa controller 53 to be communicated to the remote computer via said communications link [p. 3 lines 7-11; p. 4 lines 29-31] [also see p. 5 line 1 to p. 6 line 22].

Application No. 09/709,787  
Appeal Brief

Patent  
Attorney Docket No. 89003-6

**Claim 186**

Claim 186 is directed to a spa control system (figure 2) comprising heating means 5A (figure 2) suitable for heating water, water pump means 1P or 2P (figure 2) suitable for pumping water through the heating means 5A, a spa controller means 53 (figure 2, 3a, 3b, 4, 5a, 5b, 9, 10, 13, 14) adapted for controlling the heating means 5A and the water pumping means 1P or 2P at least in part on the basis of software installed on said the controller means 53 and an interface signal converter means 50 (figures 2, 3a, 3b, 4, 5a, 5b, 9, 10, 13, 15) in communication with said spa controller means 53. The interface signal converter means 50 is operative for:

- establishing a communications link with a remote computer [200 (figure 2); 51 52 (figure 3B); 101 or 102 or 103 or 201 (figures 5A and 5B); C1 C2 C3 D1 or D2 (figure 7); 160 (figure 9); 165 (figure 10); 300 (figures 13 and 14); p. 4 lines 2-5; p.4 lines 15-17];
- receiving communication signals conveying software components over the communications link, said software components comprising updates to software already installed on said spa controller means [p. 9 lines 8-10; figure 8, claim 29 of application as originally filed];
- communicating said software components to said spa controller means for updating the software installed on said spa controller means [p. 9 lines 9-10; figure 8].

The interface signal converter means 50 converts communication signals received from the remote computer means via said communications link [p.3 lines 5-7; p.4 lines 24-28].

The interface signal converter means 50 also converts signals from said spa controller means to be communicated to the remote computer means via the communications link (p. 3 lines 7-11; p. 4 lines 29-31) (also see p. 5 line 1 to p. 6 line 22; and p. 11 line 28 to p. 12 line 10; p. 12 lines 17-24).

Application No. 09/709,787  
Appeal Brief

Patent  
Attorney Docket No. 89003-6

### Claim 187

Claim 187 is directed to a spa control system (figure 2) comprising a heating module 5A (figure 2) suitable for heating water, at least one water pump 1P or 2P (figure 2) suitable for pumping water through the heating module 5A, a spa controller 53 (figure 2, 3a, 3b, 4, 5a, 5b, 9, 10, 13, 14) and an interface signal converter 50 (figures 2, 3a, 3b, 4, 5a, 5b, 9, 10, 13, 15) in communication with the spa controller 53. The spa controller 53 is adapted for:

- controlling the heating module 5A and the water pump 1P or 2P at least in part on the basis of software installed on the spa controller [p.1 lines 11-13; p. 9 lines 8-9; p. 11 lines 2-3; figure 8 element 152]; and
- generating a record of errors associated with at least one of the heating module and the at least one water pump (p.10 lines 3-6);

The interface signal converter 50 is operative for:

- establishing a communications link with a remote computer [200 (figure 2); 51 52 (figure 3B); 101 or 102 or 103 or 201 (figures 5A and 5B); C1 C2 C3 D1 or D2 (figure 7); 160 (figure 9); 165 (figure 10); 300 (figures 13 and 14); p. 4 lines 2-5; p.4 lines 15-17];
- receiving data comprising the record of errors generated at said spa controller 53 and transmitting a signal conveying the record of errors to the remote computer over the communications link (p.10 lines 3-6).

The interface signal converter 50 converts communication signals transferred from the remote computer via the communications link and directs the converted signals to the spa controller 53 [p.3 lines 5-7; p.4 lines 24-28]. The interface signal converter 50 also converts signals from the spa controller to be communicated to the remote computer via the communications link (p. 3 lines 7-11; p. 4 lines 29-31) (also see p. 5 line 1 to p. 6 line 22; and p. 11 line 28 to p. 12 line 10; p. 12 lines 17-24).

### Claim 194

Application No. 09/709,787  
Appeal Brief

Patent  
Attorney Docket No. 89003-6

Dependent claim 194 is a dependent claim directed to a spa control system (figure 2) which incorporates all the features of the spa control system defined in independent claim 187. In addition, claim 194 specifies that the record of errors comprises the number of times an error has occurred (p. 9 lines 6-7).

#### Claim 195

Claim 195 is directed to a spa control system (figure 2) comprising a heating module 5A (figure 2) suitable for heating water, at least one water pump 1P or 2P (figure 2) suitable for pumping water through the heating module 5A, a spa controller 53 (figure 2, 3a, 3b, 4, 5a, 5b, 9, 10, 13, 14) and an interface signal converter 50 (figures 2, 3a, 3b, 4, 5a, 5b, 9, 10, 13, 15) in communication with the spa controller 53. The spa controller 53 is adapted for controlling the heating module 5A and the water pump 1P or 2P at least in part on the basis of software installed on the spa controller 53 [p.1 lines 11-13; p. 9 lines 8-9; p. 11 lines 2-3; figure 8 element 152]. The interface signal converter 50 is operative for exchanging signals with a hand-portable remote computer (52 in figure 3B; p. 9 lines 30-31; p.13 lines 1-5) over a wireless communications link, wherein the signals received from the hand-portable remote computer include software components comprising updates to software already installed on the spa controller means [p. 9 lines 8-10; figure 8; claim 29 of application as originally filed]. The interface signal converter 50 is further operative for communicating the software components to the spa controller 53 for updating the software installed on the spa controller 53.

#### Claim 200

Claim 200 is directed to a spa control system (figure 2) comprising an interface signal converter 50 (figures 2, 3a, 3b, 4, 5a, 5b, 9, 10, 13, 15) and a spa controller 53 (figure 2, 3a, 3b, 4, 5a, 5b, 9, 10, 13, 14) in communication with the interface signal converter 50. The spa controller 53 is adapted for controlling a set of spa components at least in part on the basis of software installed on the spa controller 53 [p.1 lines 11-13; p. 9 lines 8-9; p. 11 lines 2-3; figure 8 element 152]. The interface signal converter 50 is operative for:

Application No. 09/709,787  
Appeal Brief

Patent  
Attorney Docket No. 89003-6

- establishing a communications link with a remote computer [200 (figure 2); 51 52 (figure 3B); 101 or 102 or 103 or 201 (figures 5A and 5B); C1 C2 C3 D1 or D2 (figure 7); 160 (figure 9); 165 (figure 10); 300 (figures 13 and 14); p. 4 lines 2-5; p.4 lines 15-17];
- receiving information conveying software components over the communications link and transmitting signals conveying the software components to the spa controller [claim 29 of application as originally filed; p. 9 lines 9-10; figure 8];

The spa controller 53 is operative for:

- receiving signals conveying the software components from the interface signal converter [p. 16 claim 29 of application as originally filed; p. 9 lines 9-10; figure 8];
- updating software already installed on the spa controller at least in part on the basis of the software components received from the interface signal converter 50.

#### Claim 216

Claim 216 is directed to a computer readable storage medium including a program element suitable for execution by a computing apparatus D1 or D2 (figure 7) for implementing a system for monitoring a spa controller, the computing apparatus D1 or D2 (figure 7) including a memory unit and processor operatively connected to the memory unit, said program element when executing on said processor being operative for:

- establishing a communications link with a spa controller (figure 7; p. 8 lines 24-28);
- transmitting information conveying software components over the communications link, the software components being adapted to cause software already installed on the spa controller to be updated (p. 9 lines 8-10; figure 8, claim 29 as originally filed).

Application No. 09/709,787  
Appeal Brief

Patent  
Attorney Docket No. 89003-6

37 CFR §41.37 (c)(1) (vi) Grounds of rejection to be reviewed on Appeal

- I. In the Office Action dated April 2, 2007, the Examiner rejected claims 155, 158-172, 180-183, 185-187 and 190-223 under 35 U.S.C. §112 first paragraph as failing to comply with the written description requirement.



Application No. 09/709,787  
Appeal Brief

Patent  
Attorney Docket No. 89003-6

37 CFR §41.37 (c)(1) (vii) Argument

*I. Rejected claims 155, 158-172, 180-183, 185, 186, 195-199 under 35 U.S.C. §112 first paragraph*

As set out in the Office Action dated April 2 2007, the Examiner's position is that there is a lack of support in the original disclosure for "receiving communication signals conveying software components over the communications link, said software components comprising updates to software already installed on said spa controller". On that basis, the Examiner has rejected claims 155, 158-172, 180-183, 185, 186 and 195-199 for failing to satisfy the written description requirement under 35 U.S.C. §112 first paragraph.

The Applicant disagrees with the Examiner position.

According to the Patent and Trademark Office Board of Patent Appeals and Interferences in *Ex parte Sorenson*, 3 U.S.P.Q.2d 1462, 1463 (P.T.O. Bd. Pat. App. & Int'f 1987), the test for determining whether a claimed invention is adequately described in the specification is whether the originally filed disclosure *reasonably conveys* to a person having ordinary skill in the art that the Applicant had possession of the subject matter later claimed.

The Applicant respectfully submits that the original disclosure satisfies the written description requirement under 35 U.S.C. §112. More specifically, the Applicant submits that the originally filed disclosure *reasonably conveys* to a person having ordinary skill in the art that the Applicant had possession of the subject matter claimed in claims 155, 158-172, 180-183, 185, 186 and 195-199. In particular, support for the feature of "receiving communication signals conveying software components over the communications link, said software components comprising updates to software already installed on said spa

Application No. 09/709,787  
Appeal Brief

Patent  
Attorney Docket No. 89003-6

controller" is found on page 9, lines 7-9 of the description, in Figure 8 and as well as in former claim 29 of the application as originally filed.

For the Board's ease of reference, each of the aforementioned sections of the description has been reproduced below.

On page 9, lines 7-9 recite:

"in block 152, the dealer can monitor the current software installed on spa controller 53. If there is a software update, the dealer can download this info by clicking button 153".

In Figure 8 (reproduced below), shows button 153, which indicates:

"send new software to spa".

**DEALER PAGE**

SOFTWARE: 0000000000000000

152

SEND NEW SOFTWARE TO SPA

153

---

**TROUBLE SHOOTING SECTION**

RESET ERROR LOG 156

ERROR LOG	TIME	DAYS SINCE
HIGH LIMIT	04:32 AM	3
FLOW OPEN	01:48 PM	6

NUMBER OF TIMES SPA RESET 154

00000000

150

**NUMBER OF TIMES ERRORS OCCURED**

HIGH LIMIT 1

FREEZE 0

PRESSURE SWITCH STUCK OPEN: 2

PRESSURE SWITCH STUCK CLOSED: 0

TEMPERATURE PROBE PROBLEM 3

OVERHEAT: 0

**FIG. 8**

SPA HOURS OF OPERATION SINCE LAST SERVICE: 00000000 155

UPDATE INFO

QUIT

Application No. 09/709,787  
Appeal Brief

Patent  
Attorney Docket No. 89003-6

Claim 29 as originally filed reads as follows:

"The spa of claim 1, wherein said remote computer is used to download software to said spa controller".

The Applicant is of the view that the originally filed application, and in particular the portions of the application identified above, *reasonably convey* to a person having ordinary skill in the art that the Applicant had possession of the claimed invention including the feature of "receiving communication signals conveying software components over the communications link, said software components comprising updates to software already installed on said spa controller". As such, the Applicant respectfully submits that the original disclosure satisfies the written description requirement under 35 U.S.C. §112. In light of the above, the Applicant requests that the Examiner's rejection be withdrawn with respect to claims 155, 158-172, 180-183, 185, 186 and 195-199.

#### Response to the Examiner's Arguments

##### Response to Examiner's argument that the term "this info" is vague

In the Office Action dated April 2 2007, the Examiner argues that the term "this info" on page 9, "is a vague term that could mean downloading the information about whether there IS an update to the spa controller or downloading the software version number". The Examiner goes on to indicate that "while it is possible that the downloading of a software component through the communication link to the spa controller was the intended purpose of these statements in the specification, it is certainly unclear".

The Applicant respectfully disagrees with the Examiner.

The excerpt on page 9, lines 7-9 indicates that "If there is a software update, the dealer can download *this info* by clicking button 153 (which in Figure 8 reads "send new software to spa")". When read in context, it is clear that the "info" being referred to is the

Application No. 09/709,787  
Appeal Brief

Patent  
Attorney Docket No. 89003-6

software update. This interpretation is further reinforced by the fact that button 153 in Figure 8 indicates "SEND NEW SOFTWARE TO SPA". Clearly the purpose of button 153 in Figure 8 is to allow a dealer to send new software to the spa. Moreover, the content of former claim 29, which states that the remote computer is used to download software to the spa controller, makes it clear that software can be downloaded to the spa controller from a remote computer.

The Applicant respectfully submits that the portions of the application identified above would certainly *reasonably convey* to a person of ordinary skill in the art that the Applicant had possession of the concept of "receiving communication signals conveying software components over the communications link, said software components comprising updates to software already installed on said spa controller". Accordingly, the application as originally filed is believed to satisfy the written description requirement.

Response to Examiner's argument related to intent of original disclosure

In the Office action dated April 2 2007, the Examiner also argued that it was unclear that the intent of the original disclosure specification was to have software downloaded that was an update to software already installed on the spa controller and that this communication signal was sent through the interface signal converter as claimed.

The Applicant respectfully disagrees.

The Applicant submits that the Examiner's argument does not support his position that the disclosure as filed fails to satisfy the written description requirement.

As previously indicated, the test for determining whether a claimed invention is adequately described in the specification is whether the originally filed disclosure *reasonably conveys* to a person having ordinary skill in the art that the Applicant had possession of the subject matter later claimed. The perceived intent of the original disclosure is neither conclusive nor related to the issue of the written description

Application No. 09/709,787  
Appeal Brief

Patent  
Attorney Docket No. 89003-6

requirement. As stated above, the Applicant believes that the content of the application as originally filed would *reasonably convey* to a person of ordinary skill in the art that the Applicant had possession of the claimed invention.

Moreover, the Applicant submits that claim 1 and claim 29 of the application as originally filed support, at the very least, that the Applicant intended to cover downloading software from a remote computer to a spa controller through an interface signal converter. Claims 1 and 29 of the application as originally filed have been reproduced below of the Board's ease of reference:

1. A remotely controlled and monitored spa, comprising:
  - A) a spa controller,
  - B) a interface signal converter electrically connected to said spa controller; and
  - C) a remote computer connected to said interface signal converter via a communications link,wherein said interface signal converter converts communication signals transferred from said remote computer via said communications link and directs the converted signals to said spa controller, and wherein said interface signal converter converts signals from said spa controller to be communicated to said remote computer via said communications link.

29. The spa of claim 1, wherein said remote computer is used to download software to said spa controller.

As shown, the above referenced claims support the Applicant's position that the present application intended to cover the downloading software from a remote computer to a spa controller through an interface signal converter.

Response to Examiner's argument related to lack of enablement

In the Office action dated April 2 2007, the Examiner also argues, in support of his rejection of the claims for failing to satisfy the written description requirement, that he is not convinced that a software button labeled "Send New Software to Spa" can qualify as enablement of the above-mentioned feature.

Application No. 09/709,787  
Appeal Brief

Patent  
Attorney Docket No. 89003-6

The Applicant respectfully disagrees with the Examiner.

Firstly, the Applicant would like to point out that, when considering whether or not the feature of "receiving communication signals conveying software components over the communications link, said software components comprising updates to software already installed on said spa controller" is enabled, the description as a whole as well as information known in the art are to be considered in combination. In particular, it would be inappropriate to consider whether the software button labeled "Send New Software to Spa" shown in figure 8 in isolation enables the above-mentioned feature.

Secondly, the Applicant respectfully directs the attention of the Board to §2164, which indicates that the enablement requirement of 35 U.S.C. §112, first paragraph, is separate and distinct from the description requirement. *Vas-Cath, Inc. v. Mahurkar*, 935 F.2d 1555, 1563, 19 USPQ2d 111, 1116-17 (Fed Cir. 1991).

As previously indicated, the test for determining whether a claimed invention is adequately described in the specification is whether the originally filed disclosure *reasonably conveys* to a person having ordinary skill in the art that the Applicant had possession of the subject matter later claimed. Conversely, the test for enablement, as set forth in the Supreme Court decision of *Mineral Separation v. Hyde* 242 U.S. 261, 270 (1916), is whether one reasonably skilled in the art could make or use the invention from the disclosures in the patent coupled with information known in the art *without undue experimentation*.

As previously stated, the originally filed disclosure, and in particular the portions of the application identified above, *reasonably convey* to a person having ordinary skill in the art that the Applicant had possession of the claimed invention including the feature of "receiving communication signals conveying software components over the communications link, said software components comprising updates to software already installed on said spa controller". As such, the Applicant is of the view that the original disclosure satisfies the written description requirement under 35 U.S.C. §112.

Application No. 09/709,787  
Appeal Brief

Patent  
Attorney Docket No. 89003-6

In addition, although no specific rejections for lack of enablement of were raised in the Office Action of April 2 2007, the Applicant submits that claims 155, 158-172, 180-183, 185, 186 and 195-199 meet the enablement requirement under 35 U.S.C. §112.

The Board's attention is directed to the case of *In re Wands*, 8 USPQ2d 1400 (Fed. Cir. 1988), where it is established that in order to satisfy the enablement requirement of [section] 112, paragraph 1, the specification must enable one of ordinary skill in the art to practice the claimed invention without undue experimentation. This concept relating to the requirement for enablement is further set forth in the Supreme Court decision of *Mineral Separation v. Hyde* 242 U.S. 261, 270 (1916) which indicates that the test for enablement is whether one reasonably skilled in the art could make or use the invention from the disclosures in the patent coupled with information known in the art *without undue experimentation*.

The Applicant submits that the specification as originally filed provides sufficient information to use the claimed invention. Such support can be found throughout the specification, in particular on page 8 line 13 to p. 9 line 12 of the specification and in figure 8. With reference to MPEP 2164.01(c), if a statement of utility in the specification contains within it a connotation of how to use, and/or the art recognizes that standard modes of administration are known and contemplated, 35 U.S.C. 112 is satisfied. *In re Johnson*, 282 F.2d 370, 373, 127 USPQ 216, 219 (CCPA 1960); *In re Hitchings*, 342 F.2d 80, 87, 144 USPQ 637, 643 (CCPA 1965). See also *In re Brana*, 51 F.2d 1560, 1566, 34 USPQ2d 1437, 1441 (Fed. Cir. 1993).

The Applicant also submits that the specification as originally filed provides sufficient information to make the claimed invention. Such support can be found throughout the specification, in particular on page 4 line 1 to the end of p. 6, p. 8 line 13 to p. 9 line 12, p. 11 line 26 to p. 13 line 5 as originally filed as well as in figures 2, 3a, 3b, 4, 7, 8, 13 and 14. With reference to MPEP 2164.01(b), as long as the specification discloses at least one method for making and using the claimed invention that bears a reasonable

Application No. 09/709,787  
Appeal Brief

Patent  
Attorney Docket No. 89003-6

correlation to the entire scope of the claim, then the enablement requirement of 35 U.S.C. 112 is satisfied. *In re Fisher*, 427 F.2d 833, 839, 166 USPQ 18, 24 (CCPA 1970).

Finally, the Applicant submits that the specification as originally filed provides sufficient information to the person skilled in the art to make and use the invention claimed in claims 155, 158-172, 180-183, 185, 186 and 195-199 without undue experimentation.

In light of the above, the Applicant respectfully submits that there is both support and enablement for claims 155, 158-172, 180-183, 185, 186 and 195-199 in the present application.



Application No. 09/709,787  
Appeal Brief

Patent  
Attorney Docket No. 89003-6

**II. Rejected claims 187, 190-193 under 35 U.S.C. §112 first paragraph**

As set out in the Office Action dated April 2 2007, the Examiner's position is that there is a lack of support in the original disclosure for "transmitting a record of errors". On that basis, the Examiner has rejected claim 187 for failing to satisfy the written description requirement under 35 U.S.C. §112 first paragraph. Claims 190-193 depend from claim 187 and hence stand rejected as being dependent from a rejected base claim.

The Applicant disagrees with the Examiner position.

According to the Patent and Trademark Office Board of Patent Appeals and Interferences in *Ex parte Sorenson*, 3 U.S.P.Q.2d 1462, 1463 (P.T.O. Bd. Pat. App. & Int'f 1987), the test for determining whether a claimed invention is adequately described in the specification is whether the originally filed disclosure *reasonably conveys* to a person having ordinary skill in the art that the Applicant had possession of the subject matter later claimed.

The Applicant respectfully submits that the original disclosure satisfies the written description requirement under 35 U.S.C. §112. More specifically, the Applicant submits that the originally filed disclosure *reasonably conveys* to a person having ordinary skill in the art that the Applicant had possession of the subject matter claimed in claims 187 and 190-193. In particular, support for the feature of "transmitting a record of errors" is found in the last paragraph beginning on page 8 of the description and in the sentence beginning on line 3 of page 10. The aforementioned sections are reproduced below for the Board's ease of reference.

The last paragraph beginning on page 8 [*emphasis added*]:

In a preferred embodiment, owner computers C1-C3 are always logged onto the Internet, via either a cable modem or a DSL connection. Automatically per a given time period (for example, once every hour) owner computers C1-C3 are programmed to retrieve from their spa controllers data reporting the status of the spa. Then, this data is automatically transmitted via the Internet to the

Application No. 09/709,787  
Appeal Brief

Patent  
Attorney Docket No. 89003-6

dealer that sold the spa owner his spa. In this fashion, the dealer is able to continuously monitor the condition of the spa.

The sentence beginning on line 3 of page 10 [*emphasis added*]:

Utilizing IR transceiver 52A with portable user computer 52, *the service technician is able to download from spa controller 53 to portable user computer 52 data that includes a record of errors that may have occurred during the operational life of the spa, as shown in FIG 3B.*

The Applicant is of the view that the originally filed disclosure, and in particular the portions of the application identified above, *reasonably convey* to a person having ordinary skill in the art that the Applicant had possession of the claimed invention including the feature of "transmitting a record of errors". As such, the Applicant respectfully submits that the original disclosure satisfies the written description requirement under 35 U.S.C. §112 and requests that the Examiner's rejection with respect to claims 187 and 190-193 be withdrawn.

#### **Response to the Examiner's Arguments**

In the Office Action dated April 2 2007, the Examiner argues that none of the passages relied upon by the Applicant specifically and clearly use the language of the claim. On that basis, the Examiner concludes that the specification does not clearly support the language of the claims.

The Applicant respectfully disagrees.

The Applicant submits that there is no requirement that the specification make use of the same language as the claims in order to satisfy the written description requirement.

In support of this statement, the Applicant respectfully directs the attention of the Board to *In re Wertheim*, 541 F.2d 257 at 262, 191 USPQ 90. In this case, the Court held that "The function of the written description requirement is to ensure that the inventor had possession, as of the filing date of the application relied on, of the specific subject matter

Application No. 09/709,787  
Appeal Brief

Patent  
Attorney Docket No. 89003-6

later claimed by him; how the specification accomplishes this is not material. [...] It is not necessary that the application describe the claim limitations exactly, [...] but only so clearly that persons of ordinary skill in the art will recognize from the disclosure that appellants invented processes including those limitations." *[citations omitted]*

The Applicant also respectfully directs the attention of the Board to *Martin v. Johnson*, 454 F.2d 746, 751, 172 USPQ 391, 395 (CCPA). Here, the Court concluded that, from a standpoint of the written description requirement, the omission of a structural formula (of a compound) from the Johnson application was of no consequence. The Court then indicated that the compound described is the same and the description need not be in *ipsis verbis* (i.e. "the same words") to be sufficient.

In the present case, although the precise language of claim 187 may differ from the exact language used in the description, the Applicant respectfully submits that "transmitting a record of errors" is described in the specification in a manner sufficient to convey to the person skilled in the art that the inventors had possession, as of the filing date of the application, of the subject matter claimed in claims 187 and 190-193.

As such, the Applicant respectfully submits that the original disclosure satisfies the written description requirement under 35 U.S.C. §112 and requests that the Examiner's rejection with respect to claims 187 and 190-193 be withdrawn.

Application No. 09/709,787  
Appeal Brief

Patent  
Attorney Docket No. 89003-6

**III. Rejected claim 194 under 35 U.S.C. §112 first paragraph**

As set out in the Office Action dated April 2 2007, the Examiner's position is that there is a lack of support in the original disclosure for "transmitting a record of errors" and "that this record of errors comprises the number of times an error has occurred". On that basis, the Examiner has rejected claim 194 for failing to satisfy the written description requirement under 35 U.S.C. §112 first paragraph.

The Applicant disagrees with the Examiner position.

According to the Patent and Trademark Office Board of Patent Appeals and Interferences in *Ex parte Sorenson*, 3 U.S.P.Q.2d 1462, 1463 (P.T.O. Bd. Pat. App. & Int'f 1987), the test for determining whether a claimed invention is adequately described in the specification is whether the originally filed disclosure *reasonably conveys* to a person having ordinary skill in the art that the Applicant had possession of the subject matter later claimed.

The Applicant respectfully submits that the original disclosure satisfies the written description requirement under 35 U.S.C. §112. More specifically, the Applicant submits that the originally filed disclosure *reasonably conveys* to a person having ordinary skill in the art that the Applicant had possession of the subject matter claimed in claim 194. In particular, support for the features of "transmitting a record of errors" and "that this record of errors comprises the number of times an error has occurred" can be found in the last paragraph beginning on page 8 of the description, in the second paragraph on page 9 of the description and in the sentence beginning on line 3 of page 10. The aforementioned sections are reproduced below for the Board's ease of reference.

The last paragraph beginning on page 8 [*emphasis added*]:

In a preferred embodiment, owner computers C1-C3 are always logged onto the Internet, via either a cable modem or a DSL connection. Automatically per a given time period (for example, once every hour) owner computers C1-C3 are programmed to retrieve from their spa controllers data reporting the status of

Application No. 09/709,787  
Appeal Brief

Patent  
Attorney Docket No. 89003-6

the spa. Then, this data is automatically transmitted via the Internet to the dealer that sold the spa owner his spa. In this fashion, the dealer is able to continuously monitor the condition of the spa.

Second paragraph on page 9 [emphasis added]:

In block 150, the dealer can monitor the number of times an error has occurred.  
In block 151, the dealer can monitor when an error has occurred.

The sentence beginning on line 3 of page 10 [emphasis added]:

Utilizing IR transceiver 52A with portable user computer 52, the service technician is able to download from spa controller 53 to portable user computer 52 data that includes a record of errors that may have occurred during the operational life of the spa, as shown in FIG 3B.

The Applicant is of the view that the originally filed disclosure, and in particular the portions of the application identified above, *reasonably convey* to a person having ordinary skill in the art that the Applicant had possession of the claimed invention including the feature of "transmitting a record of errors" and "that this record of errors comprises the number of times an error has occurred". As such, the Applicant respectfully submits that the original disclosure satisfies the written description requirement under 35 U.S.C. §112 and requests that the Examiner's rejection with respect to claim 194 be withdrawn.

#### Response to the Examiner's Arguments

In the Office Action dated April 2 2007, the Examiner argues that none of the passages relied upon by the Applicant specifically and clearly use the language of the claim. On that basis the Examiner concludes that the specification does not clearly support the language of the claims.

The Applicant respectfully disagrees.

The Applicant submits that there is no requirement that the specification make use of the same language as the claims in order to satisfy the written description requirement.

Application No. 09/709,787  
Appeal Brief

Patent  
Attorney Docket No. 89003-6

In support of this statement, the Applicant respectfully directs the attention of the Board to *In re Wertheim*, 541 F.2d 257 at 262, 191 USPQ 90. In this case, the Court held that "The function of the written description requirement is to ensure that the inventor had possession, as of the filing date of the application relied on, of the specific subject matter later claimed by him; how the specification accomplishes this is not material. [...] It is not necessary that the application describe the claim limitations exactly, [...] but only so clearly that persons of ordinary skill in the art will recognize from the disclosure that appellants invented processes including those limitations." *[citations omitted]*

The Applicant also respectfully directs the attention of the Board to *Martin v. Johnson*, 454 F.2d 746, 751, 172 USPQ 391, 395 (CCPA). Here, the Court concluded that, from a standpoint of the written description requirement, the omission of a structural formula (of a compound) from the Johnson application was of no consequence. The Court then indicated that the compound described is the same and the description need not be in *ipsis verbis* (i.e. "the same words") to be sufficient.

In the present case, although the precise language of claim 194 may differ from the exact language used in the description, the Applicant submits that "transmitting a record of errors" and "that this record of errors comprises the number of times an error has occurred" is described in the specification in a manner sufficient to *reasonably convey* to the person skilled in the art that the inventors had possession, as of the filing date of the application, of the subject matter claimed in claim 194.

As such, the Applicant respectfully submits that the original disclosure satisfies the written description requirement under 35 U.S.C. §112 and requests that the Examiner's rejection with respect to claim 194 be withdrawn.

Application No. 09/709,787  
Appeal Brief

Patent  
Attorney Docket No. 89003-6

**IV. Rejected claims 200-223 under 35 U.S.C. §112 first paragraph**

As set out in the Office Action dated April 2 2007, the Examiner's position is that there is a lack of support in the original disclosure for "receiving communication signals conveying software components over the communications link, said software components comprising updates to software already installed on said spa controller". On that basis, the Examiner has rejected claims 200-223 for failing to satisfy the written description requirement under 35 U.S.C. §112 first paragraph.

The Applicant disagrees with the Examiner position.

According to the Patent and Trademark Office Board of Patent Appeals and Interferences in *Ex parte Sorenson*, 3 U.S.P.Q.2d 1462, 1463 (P.T.O. Bd. Pat. App. & Int'f 1987), the test for determining whether a claimed invention is adequately described in the specification is whether the originally filed disclosure *reasonably conveys* to a person having ordinary skill in the art that the Applicant had possession of the subject matter later claimed.

The Applicant respectfully submits that the original disclosure satisfies the written description requirement under 35 U.S.C. §112. More specifically, the Applicant submits that the originally filed disclosure *reasonably conveys* to a person having ordinary skill in the art that the Applicant had possession of the subject matter claimed in claims 200-223. In particular, support for the feature of "receiving communication signals conveying software components over the communications link, said software components comprising updates to software already installed on said spa controller" is found on page 9, lines 7-9 of the description, in Figure 8 and as well as in former claim 29 of the application as originally filed.

Application No. 09/709,787  
Appeal Brief

Patent  
Attorney Docket No. 89003-6

For the Board's ease of reference, each of these sections of the description has been reproduced below.

On page 9, lines 7-9 recite:

"in block 152, the dealer can monitor the current software installed on spa controller 53. If there is a software update, the dealer can download this info by clicking button 153".

In Figure 8 (reproduced below), shows button 153, which indicates:

"send new software to spa".

**DEALER PAGE**

SOFTWARE: XXXXXXXXXX

SEND NEW SOFTWARE TO SPA

152

153

---

**TRUBLE SHOOTING SECTION**

RESET ERROR LOG 156

ERROR LOG	TIME	DAYS SINCE
HIGH LIMIT	04:32 AM	3
FLOW OPEN	01:48 PM	6

NUMBER OF TIMES SPA RESET XXXXXXXXXX 154

150

NUMBER OF TIMES ERRORS OCCURED.

HIGH LIMIT: 1

FREEZE: 9

PRESSURE SWITCH STUCK OPEN: 2

PRESSURE SWITCH STUCK CLOSED: 0

TEMPERATURE PROBE PROBLEM: 3

OVERHEAT: 0

**FIG. 8**

SPA HOURS OF OPERATION SINCE LAST SERVICE: XXXXXXXXXX 155

UPDATE INFO

QUIT

Claim 29 as originally filed read as follows:

"The spa of claim 1, wherein said remote computer is used to download software to said spa controller".



Application No. 09/709,787  
Appeal Brief

Patent  
Attorney Docket No. 89003-6

The Applicant is of the view that the originally filed disclosure, and in particular the portions of the application identified above, *reasonably convey* to a person having ordinary skill in the art that the Applicant had possession of the claimed invention including the feature of "receiving communication signals conveying software components over the communications link, said software components comprising updates to software already installed on said spa controller". As such, the Applicant respectfully submits that the original disclosure satisfies the written description requirement under 35 U.S.C. §112 and requests that the Examiner's rejection be withdrawn with respect to claims 200-223.

#### **Response to the Examiner's Arguments**

##### **Response to Examiner's argument that the term "this info" is vague**

In the Office Action dated April 2, 2007, the Examiner argues that the term "this info" on page 9, "is a vague term that could mean downloading the information about whether there IS an update to the spa controller or downloading the software version number". The Examiner goes on to indicate that "while it is possible that the downloading of a software component through the communication link to the spa controller was the intended purpose of these statements in the specification, it is certainly unclear".

The Applicant respectfully disagrees.

The excerpt on page 9, lines 7-9 indicates that "If there is a software update, the dealer can download *this info* by clicking button 153 (which in Figure 8 reads "send new software to spa")". When read in context, it is clear that the "info" being referred to is the software update. This is further reinforced by the fact that button 153 in Figure 8 indicates "SEND NEW SOFTWARE TO SPA". Clearly the purpose of button 153 in Figure 8 is to allow a dealer to send new software to the spa. Moreover, the content of former claim 29, which states that the remote computer is used to download software to

Application No. 09/709,787  
Appeal Brief

Patent  
Attorney Docket No. 89003-6

the spa controller, makes it clear that software is downloaded to the spa controller from a remote computer.

The Applicant respectfully submits that the portions of the application identified above would certainly *reasonably convey* to a person of ordinary skill in the art that the Applicant had possession of the concept of "receiving communication signals conveying software components over the communications link, said software components comprising updates to software already installed on said spa controller". Accordingly, the application as originally filed is believed to satisfy the written description requirement.

*Response to Examiner's argument related to intent of original disclosure*

In the Office Action dated April 2 2007, the Examiner also argued that it was unclear that the intent of the original disclosure specification was to have software downloaded that was an update to software already installed on the spa controller and that this communication signal is sent through the interface signal converter as claimed.

The Applicant respectfully disagrees.

The Applicant submits that the Examiner's argument does not support his position that the disclosure as filed fails to satisfy the written description requirement.

As previously indicated, the test for determining whether a claimed invention is adequately described in the specification is whether the originally filed disclosure *reasonably conveys* to a person having ordinary skill in the art that the Applicant had possession of the subject matter later claimed. The perceived intent of the original disclosure is neither conclusive nor related to the issue of the written description requirement. As stated above, the Applicant believes that the content of the application as originally filed would *reasonably convey* to a person of ordinary skill in the art that the Applicant had possession of the claimed invention.

Application No. 09/709,787  
Appeal Brief

Patent  
Attorney Docket No. 89003-6

Moreover, the Applicant submits that claim 1 and claim 29 of the application as originally filed support, at the very least, that the Applicant intended to cover downloading software from a remote computer to a spa controller through an interface signal converter. Claims 1 and 29 of the application as originally filed have been reproduced below of the Board's convenience:

1. A remotely controlled and monitored spa, comprising:
  - A) a spa controller,
  - B) a interface signal converter electrically connected to said spa controller; and
  - C) a remote computer connected to said interface signal converter via a communications link,  
wherein said interface signal converter converts communication signals transferred from said remote computer via said communications link and directs the converted signals to said spa controller, and wherein said interface signal converter converts signals from said spa controller to be communicated to said remote computer via said communications link.
29. The spa of claim 1, wherein said remote computer is used to download software to said spa controller.

As shown, the above referenced claims (1 and 29 of the application as originally filed) support the Applicant's position that the present application intended to cover the downloading of software from a remote computer to a spa controller through an interface signal converter.

*Response to Examiner's argument related to lack of enablement*

The Examiner also argues, in support of his rejection of the claims for failing to satisfy the written description requirement, that he is not convinced that a software button labeled "Send New Software to Spa" can qualify as enablement of the above-mentioned feature.

The Applicant respectfully disagrees.

Application No. 09/709,787  
Appeal Brief

Patent  
Attorney Docket No. 89003-6

Firstly, the Applicant would like to point out that, when considering whether or not the feature of "receiving communication signals conveying software components over the communications link, said software components comprising updates to software already installed on said spa controller" is enabled, the description as a whole as well as the information known in the art is to be considered. In particular, it would be inappropriate to consider whether the software button labeled "Send New Software to Spa" shown in figure 8 in isolation enables the above-mentioned feature.

Secondly, the Applicant respectfully directs the attention of the Board to §2164, which indicates that the enablement requirement of 35 U.S.C. §112, first paragraph, is separate and distinct from the description requirement. *Vas-Cath, Inc. v. Mahurkar*, 935 F.2d 1555, 1563, 19 USPQ2d 111, 1116-17 (Fed Cir. 1991).

As previously indicated, the test for determining whether a claimed invention is adequately described in the specification is whether the originally filed disclosure *reasonably conveys* to a person having ordinary skill in the art that the Applicant had possession of the subject matter later claimed. Conversely, the test for enablement, as set forth in the Supreme Court decision of *Mineral Separation v. Hyde* 242 U.S. 261, 270 (1916), is whether one reasonably skilled in the art could make or use the invention from the disclosures in the patent coupled with information known in the art *without undue experimentation*.

As previously stated, the originally filed disclosure, and in particular the portions of the application identified above, *reasonably convey* to a person having ordinary skill in the art that the Applicant had possession of the claimed invention including the feature of "receiving communication signals conveying software components over the communications link, said software components comprising updates to software already installed on said spa controller". As such, the Applicant is of the view that the original disclosure satisfies the written description requirement under 35 U.S.C. §112.

Application No. 09/709,787  
Appeal Brief

Patent  
Attorney Docket No. 89003-6

In addition, although no specific rejection for lack of enablement of was raised in the Office Action of April 2 2007, the Applicant submits that claims 200-223 meet the enablement requirement under 35 U.S.C. §112.

The Board's attention is directed to the case of *In re Wands*, 8 USPQ2d 1400 (Fed. Cir. 1988), where it is established that in order to satisfy the enablement requirement of [section] 112, paragraph 1, the specification must enable one of ordinary skill in the art to practice the claimed invention without undue experimentation. This concept relating to the requirement for enablement is further set forth in the Supreme Court decision of *Mineral Separation v. Hyde* 242 U.S. 261, 270 (1916) which indicates that the test for enablement is whether one reasonably skilled in the art could make or use the invention from the disclosures in the patent coupled with information known in the art *without undue experimentation*.

The Applicant submits that the specification as originally filed provides sufficient information to use the claimed invention. Such support can be found throughout the specification, in particular on page 8 line 13 to p. 9 line 12 of the specification and in figure 8. With reference to MPEP 2164.01(c), if a statement of utility in the specification contains within it a connotation of how to use, and/or the art recognizes that standard modes of administration are known and contemplated, 35 U.S.C. 112 is satisfied. *In re Johnson*, 282 F.2d 370, 373, 127 USPQ 216, 219 (CCPA 1960); *In re Hitchings*, 342 F.2d 80, 87, 144 USPQ 637, 643 (CCPA 1965). See also *In re Brana*, 51 F.2d 1560, 1566, 34 USPQ2d 1437, 1441 (Fed. Cir. 1993).

The Applicant also submits that the specification as originally filed provides sufficient information to make the claimed invention. Such support can be found throughout the specification, in particular on page 4 line 1 to the end of p. 6, p. 8 line 13 to p. 9 line 12, p. 11 line 26 to p. 13 line 5 as originally filed as well as in figures 2, 3a, 3b, 4, 7, 8, 13 and 14. With reference to MPEP 2164.01(b), as long as the specification discloses at least one method for making and using the claimed invention that bears a reasonable

Application No. 09/709,787  
Appeal Brief

Patent  
Attorney Docket No. 89003-6

correlation to the entire scope of the claim, then the enablement requirement of 35 U.S.C. 112 is satisfied. *In re Fisher*, 427 F.2d 833, 839, 166 USPQ 18, 24 (CCPA 1970).

Finally, the Applicant submits that the specification as originally filed provides sufficient information to the person skilled in the art to make and use the invention claimed in claims 200-223 without undue experimentation.

In light of the above, the Applicant respectfully submits that there is both support and enablement for 200-223 claims in the present application.

Application No. 09/709,787  
Appeal Brief

Patent  
Attorney Docket No. 89003-6

37 CFR §41.37 (c)(1) (viii) Claim Appendix

The following is a listing of the claims involved in the present appeal.

Claims 1 – 154 (cancelled)

Claim 155. (Previously presented). A spa control system, comprising:

- A) a heating module suitable for heating water;
- B) at least one water pump suitable for pumping water through said heating module;
- C) a spa controller adapted for controlling said heating module and said water pump at least in part on the basis of software installed on said spa controller;
- D) an interface signal converter in communication with said spa controller, said interface signal converter being operative for:
  - establishing a communications link with a remote computer;
  - receiving communication signals conveying software components over the communications link, said software components comprising updates to software already installed on said spa controller;
  - communicating said software components to said spa controller for updating the software installed on said spa controller;

wherein said interface signal converter converts communication signals received from the remote computer via said communications link and directs the converted signals to said spa controller, and wherein said interface signal converter converts signals from said spa controller to be communicated to the remote computer via said communications link.

Claims 156-157 (Cancelled)

Claim 158. (Previously presented) The spa control system as in Claim 155, wherein said interface signal converter comprises an RS transceiver.

Application No. 09/709,787  
Appeal Brief

Patent  
Attorney Docket No. 89003-6

Claim 159.(Previously presented) The spa control system as in Claim 158, wherein said RS transceiver is an RS-485 transceiver.

Claim 160.(Previously presented) The spa control system as in Claim 155, wherein said interface signal converter comprises an IR transceiver.

Claim 161.(Previously presented) The spa control system as in Claim 155, wherein said interface signal converter comprises an RF transceiver.

Claim 162.(Previously presented) The spa control system as in Claim 155, wherein said interface signal converter is capable of transceiving at least two different types of communication signals.

Claim 163.(Previously presented) The spa control system as in Claim 162, wherein said at least two different types of communication signals is an RS differential signal and an IR signal.

Claim 164.(Previously presented) The spa control system as in Claim 155, wherein said interface signal converter is removably attached to said spa controller.

Claim 165.(Previously presented) The spa control system as in Claim 164, wherein said spa controller defines a cavity, wherein said interface signal converter is removably attached to said spa controller via said cavity.

Claim 166.(Previously presented) The spa control system as in Claim 155, wherein said interface signal converter is rigidly attached to said spa controller.

Claim 167.(Previously presented) The spa control system as in Claim 155, wherein said interface signal converter is rigidly attached to the spa controller as one unit.



Application No. 09/709,787  
Appeal Brief

Patent  
Attorney Docket No. 89003-6

Claim 168.(Previously presented) The spa control system as in Claim 155, wherein said interface signal converter is adapted for establishing a communications link with a remote computer over a wire-line link.

Claim 169.(Previously presented) The spa control system as in Claim 155, wherein said communications link is a wireless communications link.

Claim 170.(Previously presented) The spa control system as in Claim 155, wherein said interface signal converter is adapted for establishing a communications link with a remote computer through a computer network.

Claim 171.(Previously presented) The spa control system as in Claim 170, wherein said computer network is the Internet.

Claim 172.(Previously presented) The spa control system as in Claim 155, wherein said communications link is established over the Internet.

Claim 173.- Claim 179.(Cancelled)

Claim 180.(Previously presented) The spa control system as in claim 170, wherein said computer network is a LAN.

Claim 181.(Previously presented) The spa control system as in Claim 155, wherein said remote computer is a PDA.

Claim 182.(Previously presented) The spa control system as in Claim 155, wherein said remote computer is a cellular phone.

Claim 183.(Previously presented) The spa control system as in Claim 155, further comprising a spa skirt, and wherein said remote computer is located underneath said spa skirt.

Application No. 09/709,787  
Appeal Brief

Patent  
Attorney Docket No. 89003-6

Claim 184.(Cancelled)

Claim 185.(Previously presented) The spa control system as in Claim 155, wherein said remote computer is used to monitor and control the spa.

Claim 186.(Previously presented) A spa control system, comprising:

- A) heating means suitable for heating water;
- B) water pump means suitable for pumping water through said heating means;
- C) a spa controller means adapted for controlling said heating means and said water pumping means at least in part on the basis of software installed on said spa controller means,
- D) an interface signal converter means in communication with said spa controller means, said interface signal converter means being operative for:
  - establishing a communications link with a remote computer;
  - receiving communication signals conveying software components over the communications link, said software components comprising updates to software already installed on said spa controller means;
  - communicating said software components to said spa controller means for updating the software installed on said spa controller means;wherein said interface signal converter means converts communication signals received from the remote computer means via said communications link, and wherein said interface signal converter means converts signals from said spa controller means to be communicated to said remote computer means via the communications link.

Claim 187.(Previously presented) A spa control system, comprising:

- A) a heating module suitable for heating water;
- B) at least one water pump suitable for pumping water through said heating module;
- C) a spa controller adapted for;

Application No. 09/709,787  
Appeal Brief

Patent  
Attorney Docket No. 89003-6

- controlling said heating module and said water pump at least in part on the basis of software installed on said spa controller; and
- generating a record of errors associated with at least one of said heating module and said at least one water pump;

D) an interface signal converter in communication with said spa controller, said interface signal converter being operative for:

- establishing a communications link with a remote computer;
- receiving data comprising said record of errors generated at said spa controller;
- transmitting a signal conveying the record of errors to the remote computer over said communications link;

wherein said interface signal converter converts communication signals transferred from the remote computer via said communications link and directs the converted signals to said spa controller, and wherein said interface signal converter converts signals from said spa controller to be communicated to the remote computer via said communications link.

Claims 188 – 189 (Cancelled)

Claim 190.(Previously presented) The spa control system as in Claim 187, wherein said communications link is a wireless communications link.

Claim 191.(Previously presented) The spa control system as in Claim 187, wherein said remote computer is a cellular phone.

Claim 192.(Previously presented) The spa control system as in Claim 187, wherein said interface signal converter is integrated into said spa controller.

Claim 193.(Previously presented) The spa control system as in Claim 187, wherein said interface signal converter comprises an IR transceiver.

Application No. 09/709,787  
Appeal Brief

Patent  
Attorney Docket No. 89003-6

Claim 194. (Previously presented) The spa control system as in Claim 187, wherein said record of errors comprises the number of times an error has occurred.

Claim 195. (Previously presented) A spa control system comprising:

- A) a heating module suitable for heating water;
- B) at least one water pump suitable for pumping water through said heating module;
- C) a spa controller adapted for controlling said heating module and said water pump at least in part on the basis of software installed on said spa controller;
- D) an interface signal converter in communication with said spa controller, said interface signal converter being operative for exchanging signals with a hand-portable remote computer over a wireless communications link, wherein the signals received from said hand-portable remote computer include software components comprising updates to software already installed on said spa controller, said interface signal converter being further operative for communicating said software components to said spa controller for updating the software installed on said spa controller.

Claim 196. (Previously presented) The spa control system as in Claim 195, wherein said hand-portable remote computer is a PDA.

Claim 197. (Previously presented) The spa control system as in Claim 195, wherein said hand-portable remote computer is a cellular phone.

Claim 198. (Previously presented) The spa control system as in Claim 195, wherein said interface signal converter converts signals transferred from the hand-portable remote computer via said wireless communications link and directs the converted signals to said spa controller, and wherein said interface signal converter converts signals from said spa controller to be communicated to the hand-portable remote computer via said wireless communications link.

Application No. 09/709,787  
Appeal Brief

Patent  
Attorney Docket No. 89003-6

Claim 199.(Previously presented) The spa control system as in Claim 195, wherein said hand-portable remote computer is a PDA device.

Claim 200. (Previously presented) A spa control system comprising:

- A) a interface signal converter;
- B) a spa controller in communication with said interface signal converter, said spa controller being adapted for controlling a set of spa components at least in part on the basis of software installed on said spa controller;
- C) said interface signal converter being operative for:
  - establishing a communications link with a remote computer;
  - receiving information conveying software components over the communications link;
  - transmitting signals conveying the software components to the spa controller;
- D) said spa controller being operative for:
  - receiving signals conveying the software components from said interface signal converter;
  - updating software already installed on said spa controller at least in part on the basis of the software components received from interface signal converter.

Claim 201.(Previously presented) The spa control system as in Claim 200, wherein said interface signal converter comprises an RS transceiver.

Claim 202.(Previously presented) The spa control system as in Claim 201, wherein said RS transceiver is an RS-485 transceiver.

Claim 203.(Previously presented) The spa control system as in Claim 200, wherein said interface signal converter comprises an IR transceiver.

Claim 204.(Previously presented) The spa control system as in Claim 200, wherein said interface signal converter comprises an RF transceiver.

Application No. 09/709,787  
Appeal Brief

Patent  
Attorney Docket No. 89003-6

Claim 205.(Previously presented) The spa control system as in Claim 200, wherein said interface signal converter is capable of transceiving at least two different types of communication signals.

Claim 206.(Previously presented) The spa control system as in Claim 205, wherein said at least two different types of communication signals include an RS differential signal and an IR signal.

Claim 207.(Previously presented) The spa control system as in Claim 200, wherein said interface signal converter is removably attached to said spa controller.

Claim 208.(Previously presented) The spa control system as in Claim 200, wherein said interface signal converter is rigidly attached to said spa controller.

Claim 209.(Previously presented) The spa control system as in Claim 200, wherein said spa controller include a body, said interface signal converter being an integral part of the body of said spa controller.

Claim 210.(Previously presented) The spa control system as in Claim 200, wherein said interface signal converter is adapted for establishing a communications link with a remote computer over a wire-line link.

Claim 211.(Previously presented) The spa control system as in Claim 200, wherein said communications link is a wireless communications link.

Claim 212.(Previously presented) The spa control system as in Claim 200, wherein said interface signal converter is adapted for establishing a communications link with a remote computer through a computer network.

Claim 213.(Previously presented) The spa control system as in Claim 212, wherein said computer network is the Internet.

Application No. 09/709,787  
Appeal Brief

Patent  
Attorney Docket No. 89003-6

Claim 214.(Previously presented) The spa control system as in Claim 200, wherein said remote computer is a PDA.

Claim 215.(Previously presented) The spa control system as in Claim 200, wherein said remote computer is a cellular phone.

Claim 216.(Previously presented) A computer readable storage medium including a program element suitable for execution by a computing apparatus for implementing a system for monitoring a spa controller, the computing apparatus including a memory unit and processor operatively connected to the memory unit, said program element when executing on said processor being operative for:

- a) establishing a communications link with a spa controller;
- b) transmitting information conveying software components over the communications link, the software components being adapted to cause software already installed on the spa controller to be updated.

Claim 217.(Previously presented) A computer readable storage medium as defined in claim 216, wherein said computing apparatus is a PDA.

Claim 218.(Previously presented) A computer readable storage medium as defined in claim 216, wherein said computing apparatus is a cellular phone.

Claim 219. (Previously presented) A computer readable storage medium as defined in claim 216, wherein said communications links is a wireless link.

Claim 220. (Previously presented) A spa control system as in Claim 155, wherein said interface signal converter is further operative for:

- receiving data comprising a record of errors from said spa controller;
- transmitting a signal conveying the record of errors to the remote computer over said communications link.

Application No. 09/709,787  
Appeal Brief

Patent  
Attorney Docket No. 89003-6

Claim 221. (Previously presented) A spa control system as in Claim 186, wherein said interface signal converter means is further operative for:

- receiving data comprising a record of errors from said spa controller means;
- transmitting a signal conveying the record of errors to the remote computer over said communications link.

Claim 222. (Previously presented) A spa control system as in Claim 195, wherein said interface signal converter means is further operative for:

- receiving data comprising a record of errors from said spa controller means;
- transmitting a signal conveying the record of errors to the remote computer over said communications link.

Claim 223. (Previously presented) A spa control system as in Claim 200, wherein said interface signal converter means is further operative for:

- receiving data comprising a record of errors from said spa controller means;
- transmitting a signal conveying the record of errors to the remote computer over said communications link.



Application No. 09/709,787  
Appeal Brief

Patent  
Attorney Docket No. 89003-6

37 CFR §41.37 (c)(1) (ix) Evidence Appendix

None.

Application No. 09/709,787  
Appeal Brief

Patent  
Attorney Docket No. 89003-6

37 CFR §41.37 (c)(1) (x) Related Proceedings Appendix

None.

Application No. 09/709,787  
Appeal Brief

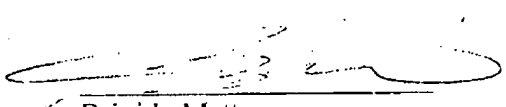
Patent  
Attorney Docket No. 89003-6

**CONCLUSION**

It is respectfully submitted that claims 155, 158-172, 180-183, 185-187 and 190-223 are in condition for allowance. Reconsideration of the rejections and objections is requested. Allowance of claims 155, 158-172, 180-183, 185-187 and 190-223 at an early date is solicited.

Respectfully submitted,

Dated: January 28, 2008

  
Brigide Mattar  
Reg. No. 51,284  
Agent for the Applicant

SMART & BIGGAR  
1000 De La Gauchetière Street West  
Suite 3300  
Montreal, Quebec H3B 4W5  
CANADA

Customer Number: 28291  
Telephone: (514) 954-1500  
Facsimile: (514) 954-1396